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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/895,477 | 06/28/2001 | Michael J. Recchia JR. | 652P009 | 7394 |

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EXAMINER

SIPOS, JOHN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3721

DATE MAILED: 01/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/895,477

Applicant(s)

RECCHIA, MICHAEL J.

Examiner

John Sipos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 9-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

RESTRICTION REQUIREMENT

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-8, drawn to a heat-sealing die, classified in Class 53, subclass 374.8.

Group II. Claims 9-25, drawn to a method for forming packages, classified in Class 53, subclass 455.

The inventions are distinct, each from the other, because of the following reasons:

The inventions of Groups II and I are related as **process and apparatus for its practice**.

The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP 806.05(e)). In this case the heat-sealing die recited in the claims of Group I can be used in a process other than the one set forth in the claims of Group II. For example, the heating die of Group I could be use in a method wherein the bags are not formed from two separate materials that are sealed together but rather in a method wherein a web is folded longitudinally and sealing die is used to form and separate the bags transversally.

Because these inventions are distinct for the reasons given above, and because they have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes, as indicated, is proper.

Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even if the restriction requirement is traversed.

During a telephone conversation between Examiner John Sipos and Mr. G. Ellis, attorney of record in this case, on 1/8/04, a provisional election was made with traverse to prosecute the invention of Group II comprising claims 9-25. Affirmation of this election must be made by applicant in responding to this Office action. Claims 1-8 are withdrawn from further consideration by the examiner as being drawn to a non-elected invention. (See 37 CFR 1.142(b)). An action on the merits of the elected claims follows.

Applicant is reminded that, upon cancellation of claims to a non-elected invention, the **inventorship must be amended** in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h). Applicant should further **amend the title**, in necessary, to reflect the elected invention.

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-14 and 21-25 are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what manipulative steps of the process are defined in claims 10-13 and 21-23. The claims set forth only structural limitations and positive steps of the process are not recited.

Regarding claims 14,24 and 25 it is not clear to what these claims refer in the specification. The only reference in the specification to "strands" is on page 5, second full paragraph. It is assumed that the cross-strands merely refer to the strands that are inherently present in a mesh or netting.

Claim 19 is indefinite in that the steps recited therein are already set forth in claim 9 on which the claim depends. Claim 19 should depend on claim 15.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 9-25 are rejected under 35 U.S.C. ' 102(b) as being clearly anticipated by the patent to Rechia (6,058,681) in view of Fox (6,030,120) or Day (3,123,279). The patent to Rechia shows a packaging method comprising of advancing a folded film web, transversally sealing the folded web and slitting the web between the seals (46) to form individual bags with the seals and slits being spaced from the upper edge of the web, filling the bags 54, longitudinally sealing 82 and cutting 60 the web to separate the bags from the continuous upper

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edge. The Rechia process lacks the forming of the bags from two materials and the folded lower edge. The patents to Fox and Day show the forming of a bag by folding the bottom edge of a solid film (18 and 3) respectively over a mesh sheet and sealing around the bag edges to form ventilated bags with strong edges. It would have been obvious to one skilled in the art to form the bags of Rechia from two materials with a folded lower edge as shown by Fox or Day to provide for a ventilated bag with strong edges. Little patentable weight is given to the structure recited in claims 10-13 and 21-23 since no manipulative steps are set forth. The use of indicia strips (claim 17) is well known in the bag art and would have been obvious to use if further identification or indicia is desired.

ADDITIONAL REFERENCES CITED

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The patents to Cartier, Fox and Olaches show bags made of solid and mesh sheets.

The other cited patents show bag forming and filling processes similar to applicant's with Shea, Bodolay, Reid and Japanese 65146 show reciprocating dual sealers with an central cutter.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.


The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9306**.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



John Sipos
Primary Examiner
Art Unit 3721

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